



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ADP Case No. 14-00685
)
Applicant for Public Trust Position)

Appearances

For Government: Braden M. Murphy, Esquire, Department Counsel
For Applicant: *Pro se*

10/21/2014

Decision

METZ, John Grattan, Jr., Administrative Judge:

Based on the record in this case,¹ I deny Applicant’s eligibility for trustworthiness positions.

On 14 April 2014, the Department of Defense (DoD) sent Applicant a Statement of Reasons (SOR) raising trustworthiness concerns under Guideline F, Financial Considerations.² Applicant timely answered the SOR, requesting a decision without

¹Consisting of the File of Relevant Material (FORM), Items 1-8 and Applicant’s Response to the FORM (Response).

²DoD acted under the 9 April 1993 memorandum of agreement between the Composite Health Care System Program Office (CHCSPO), the Defense Office of Hearings and Appeals (DOHA), and the Assistant Secretary of Defense for Command, Control, Communications, and Intelligence (ASD C³I) to conduct trustworthiness determinations for contractor personnel employed in Information Systems Positions defined in DoD Regulation 5200.2-R, *Personnel Security Program* (Regulation), dated January 1987. ADP cases are adjudicated under DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive) and the adjudicative guidelines (AG) promulgated by the President on December 29,

hearing by the Defense Office of Hearings and Appeals (DOHA). The record in this case closed 19 August 2014, the day Department Counsel indicated no objection to Applicant's Response to the FORM. DOHA assigned the case to me 28 August 2014.

Findings of Fact

Applicant admitted SOR financial allegations 1.-1.f, 1.m, and 1.o-1.q. She denied allegations 1.g-1.l and 1.n. However, during a September 2013 subject interview with a Government investigator, she admitted debts that she now denies: SOR 1.g, 1.k-1.l, and 1.n. The only debts she denied in both places are SOR debts 1.h-1.j. She is a 58-year-old customer service representative employed by a defense contractor since September 2013. This is her first application for a position of trust. She will have access to sensitive medical data.

The SOR alleges, and Government exhibits substantiate, 17 delinquent debts totaling over \$14,000. Applicant admits 10 debts for \$6,500, and has previously acknowledged four additional debts for \$4,000 (Item 6). The three debts she denies total \$3,600.

Applicant attributes her debts to her mother's funeral expenses, although she has not said when her mother died, and the loss of her mother's income to help with the debts. She was also unemployed from April to September 2013, during which time she received unemployment compensation. Her Response shows that she paid SOR debt 1.m in May 2014 and has been paying \$13 monthly on SOR debt 1.o for two or three months. She also documented that two accounts not alleged in the SOR are in good standing. However, it appears that she is only making the minimum monthly payment on those accounts.

Applicant submitted a handwritten budget with her Response that reflects \$92 monthly positive cash flow. The budget provides for the monthly payment on SOR debt 1.o. It also shows \$95 monthly payments to credit cards, but does not specify if those payments are to delinquent or current credit cards. Applicant has not documented any credit or financial counseling. She provided no work or character references.

Policies

The adjudicative guidelines (AG) list factors to evaluate a person's suitability for access to sensitive information. Administrative judges must assess disqualifying and mitigating conditions under each issue fairly raised by the facts and situation presented. Each decision must also show a fair, impartial, and commonsense consideration of the factors listed in AG ¶ 2(a). The applicability of a disqualifying or mitigating condition is not, by itself, conclusive. However, specific guidelines should be followed when a case can be measured against them, as they are policy guidance governing the grant or

2005, and effective within the DoD for SORs issued after September 1, 2006.

denial of a clearance. Considering the SOR allegations and the evidence as a whole, the relevant adjudicative guideline is Guideline F (Financial Considerations).

Trustworthiness decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant's public trust position. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to applicant to refute, extenuate, or mitigate the Government's case. Because no one has a right to a public trust position, the applicant bears a heavy burden of persuasion.

Persons with access to sensitive information enter into a fiduciary relationship with the Government based on trust and confidence. Therefore, the Government has a compelling interest in ensuring each applicant possesses the required judgement, reliability, and trustworthiness of those who must protect national interests as their own. The "clearly consistent with the national interest" standard compels deciding any reasonable doubt about an Applicant's suitability for access in favor of the Government.³

Analysis

The Government established a case for disqualification under Guideline F, and Applicant did not mitigate the security concerns. While some of Applicant's financial difficulties may be reasonably attributable to her six-month's unemployment in 2013 and her mother's death, she submitted insufficient information to determine she acted responsibly under the circumstances. She documented little efforts to resolve her debts, and did not provide a proposed plan to address them.⁴

Applicant potentially meets only one of the mitigating factors for financial considerations. Her financial difficulties are both recent and multiple.⁵ While her unemployment (and her mother's death, if documented) are clearly circumstances beyond her control, she got a new job in September 2013, and she has documented very few efforts dealing with the debts alleged in the SOR, or documenting any efforts to resolve them.⁶ In addition, there is no evidence that she has sought credit counseling or otherwise brought the problem under control.⁷ There is little documentary evidence of

³See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁴¶ 19 (a) inability or unwillingness to satisfy debts; (c) a history of not meeting financial obligations.

⁵¶ 20 (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur.

⁶¶ 20 (b) the conditions that resulted in the financial problem were largely beyond the person's control . . . and the individual acted responsibly under the circumstances.

⁷¶ 20 (c) the person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control.

any good-faith effort to satisfy the debts alleged in the SOR.⁸ Finally, given her unwillingness to seek or use financial counseling, there is nothing in the record to suggest that Applicant will put her financial problems behind her. I conclude Guideline F against Applicant.

Formal Findings

Paragraph 1. Guideline F:	AGAINST APPLICANT
Subparagraph a-q:	Against Applicant

Conclusion

Under the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue eligibility for a public trust position for Applicant. Eligibility for a public trust position denied.

JOHN GRATTAN METZ, JR
Administrative Judge

⁸ 20 (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.